

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

SAMUEL SURLES,

Plaintiff,

CASE NO. 07-CV-13555

v.

DISTRICT JUDGE THOMAS L. LUDINGTON
MAGISTRATE JUDGE CHARLES E. BINDER

DONALD ANDISON, *et al.*,

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** this case be reassigned to Judge Rosen pursuant to E. D. Mich. LR 83.11 (7) (C) as a companion case to Case No. 05-CV-74534. In order to expedite this process, **IT IS FURTHER RECOMMENDED** that the Order of Reference for General Case Management previously issued in this case be vacated.

II. REPORT

On November 30, 2005, Plaintiff, then a state prisoner housed at the Gus Harrison Correctional Facility, filed *pro se* a federal rights complaint under 42 U.S.C. §1983 alleging that a resident manager confiscated Plaintiff's legal papers and computer tapes. The case was assigned to United States District Judge Gerald Rosen. (*See Surles v. Andison*, Case No. 05-CV-74534.) On April 20, 2006, Judge Rosen issued an Order dismissing the case without prejudice as Plaintiff had failed to file documentation indicating that he had exhausted the administrative remedies

available to him through the Michigan Department of Corrections (“MDOC”) grievance procedures. (Case No. 05-74534, Dkt 10.)

On August 23, 2007, Plaintiff submitted two documents to the clerk’s office. The first was a Motion for Reconsideration in which Plaintiff alleged that he had now completed the MDOC grievance process. (*Id.*, Dkt. 12.) This document was docketed in Case No. 05-74534. On September 4, 2007, Judge Rosen denied the motion, noting that Plaintiff had failed to include with his Motion for Reconsideration the necessary documentation. (*Id.*, Dkt. 13 at 2.)

The other set of papers submitted on August 23, 2007, was entitled “Now, Cometh Forth the Petitioner for a Tort Claim.” On this document, Plaintiff had also listed Judge Rosen, but the Clerk construed the document to be a new case, issuing it the case number shown above, and assigning it to United States District Judge Thomas Ludington. Thereafter, Judge Ludington issued an Order of Reference for General Case Management to this Magistrate Judge. (Case No. 07-13555 at Dkt. 5.)

After review of the document filed by the Plaintiff and docketed as the complaint in this case, I suggest that it appears to have in fact been intended by Plaintiff to be the supporting documentation for his Motion for Reconsideration filed in Case No. 05-74534. As a result, I suggest that Judge Rosen be given the opportunity to determine whether Plaintiff has now complied with the orders issued in Case No. 05-74534. I therefore suggest that this case be reassigned to Judge Rosen pursuant to E.D. Mich. LR 83.11(7)(C). In order to expedite this process, it is further suggested that the previously-issued Order of Reference for General Case Management in the instant case be vacated.

III. REVIEW

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *See Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E Binder

CHARLES E. BINDER
United States Magistrate Judge

Dated: October 2, 2007

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, served on Samuel Surles by first class mail, and served on District Judge Ludington in the traditional manner.

Date: October 2, 2007

By s/Jean L. Broucek
Case Manager to Magistrate Judge Binder